

STATE PUBLIC DEFENDER[493]

Notice of Intended Action

Pursuant to the authority of Iowa Code section 13B.4(8), the State Public Defender gives Notice of Intended Action to amend Chapter 7, "Definitions," Chapter 12, "Claims for Indigent Defense Services," and Chapter 14, "Claims for Attorney Fees in 600A Terminations," Iowa Administrative Code.

These proposed amendments implement 2006 Iowa Acts, House File 2789, which revises the hourly rate paid for indigent defense cases, and 2006 Iowa Acts, House File 2672, which modifies eligibility for court-appointed counsel in Iowa Code chapter 600A termination cases.

Interested persons may make written comments or suggestions on the proposed amendments on or before July 12, 2006. Written materials should be addressed to the State Public Defender, Lucas State Office Building, Fourth Floor, 321 East 12th Street, Des Moines, Iowa 50319-0087, faxed to (515)281-7289, or E-mailed to msmith@spd.state.ia.us.

There will be a public hearing on July 12, 2006, at 9 a.m. in Conference Room 424 of the Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements such as those related to hearing or mobility impairments should contact the State Public Defender and advise of specific needs.

These amendments were also Adopted and Filed Emergency and are published herein as ARC 5167B. The content of that submission is incorporated by reference.

These amendments are intended to implement Iowa Code chapters 13B and 815 as amended by 2006 Iowa Acts, House File 2789, and chapter 600A as amended by 2006 Iowa Acts, House File 2672.

STATE PUBLIC DEFENDER[493]
Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 13B.4(8), the State Public Defender amends Chapter 7, "Definitions," Chapter 12, "Claims for Indigent Defense Services," and Chapter 14, "Claims for Attorney Fees in 600A Terminations," Iowa Administrative Code.

These amendments implement 2006 Iowa Acts, House File 2789, which revises the hourly rate paid for indigent defense cases, and 2006 Iowa Acts, House File 2672, which modifies eligibility for court-appointed counsel in Iowa Code chapter 600A termination cases.

Pursuant to Iowa Code section 17A.4(2), the State Public Defender finds that notice and public participation are impractical. These amendments are required because of the statutory changes noted above.

The State Public Defender also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that these amendments should be made effective July 1, 2006, because the amendments confer a benefit on the public by increasing payments to court-appointed attorneys handling indigent defense cases.

These amendments are also published herein under Notice of Intended Action as ARC 5168B to allow for public comment.

These amendments are intended to implement Iowa Code chapters 13B and 815 as amended by 2006 Iowa Acts, House File 2789, and chapter 600A as amended by 2006 Iowa Acts, House File 2672.

These amendments will become effective July 1, 2006.

The following amendments are adopted.

ITEM 1. Amend rule 493—7.1(13B,815), definition of "claimant," as follows:

"Claimant" means an appointed attorney, a county, or other person authorized by Iowa law and the rules of criminal procedure to make application to the state for *seeking* reimbursement of attorney *costs or fees* , depositions, and other expenses incurred from the representation of an indigent person *payable from the indigent defense fund*.

ITEM 2. Amend rule 493—12.4(13B,815) as follows:

493—12.4(13B,815) Rate of compensation. Unless the attorney has a contract that provides for a different manner or rate of payment, the following hourly rates shall apply to payment of all claims for cases to which the attorney was appointed after June 30, 1999, *and before July 1, 2006*:

Attorney time:	Class A felonies	\$60/hour	
	Class B felonies		\$55/hour
	All other		cases, _____ including
	all appeals	\$50/hour	
Paralegal time:		\$25/hour	

Unless the attorney has a contract that provides for a different manner or rate of payment, the following hourly rates shall apply to payment of all claims for cases to which the attorney was appointed after June 30, 2006:

Attorney time:	Class A felonies	\$65/hour
	All other criminal cases	\$60/hour
	All other cases	\$55/hour
Paralegal time:		\$25/hour

12.4(1) Applicability to juvenile cases. In a juvenile case to which the attorney was appointed before July 1, 1999, the state public defender will pay the attorney ~~at the above referenced rate~~ *\$50 per hour* for all services performed following the dispositional hearing or the first regularly scheduled review hearing occurring after June 30, 1999. *In a juvenile case to which the attorney was appointed after June 30, 1999, but before July 1, 2006, the state public defender will pay the attorney \$55 per hour for all services performed following the dispositional hearing or the first regularly scheduled review hearing occurring after June 30, 2006.* However, the attorney must file separate claims for services before and after said hearing. If a claim is submitted with two hourly rates on it, the claim will be paid at the lower applicable rate.

12.4(2) Appointments before July 1, 1999. In a case to which the attorney was appointed before July 1, 1999, attorney time shall be paid at a rate that is \$5 per hour less than the ~~above~~ *above* rates *established* pursuant to

2000 Iowa Acts, chapter 1115, section 10. Claims for compensation in excess of these rates are not payable under the attorney's appointment and will be reduced.

12.4(3) Applicability to appellate contracts. This rule shall not apply to claims from attorneys with appellate contracts with the state public defender.

12.4(4) ~~Probation/parole violations~~ *All other cases.* ~~The hourly rate for time spent on probation or parole violation proceedings shall be \$50 per hour.~~ *As used in this rule, the term "all other cases" includes appeals, juvenile cases, contempt actions, representation of material witnesses, and probation/parole violation cases, postconviction relief cases, restitution, extradition, and sentence reconsideration proceedings without regard to the level of the underlying charge.*

ITEM 3. Amend subrule 12.5(1) as follows:

12.5(1) Frivolous appeals. In an appeal *to which the attorney was appointed after June 30, 1999, and before July 1, 2006*, in which the attorney withdraws, based on a determination that the appeal is frivolous or in which the appeal is dismissed prior to the filing of the attorney's proof brief, the attorney shall be paid at the rate of \$50 per hour, with a maximum fee of \$1,000 in each case. *In an appeal to which the attorney was appointed after June 30, 2006, in which the attorney withdraws based on a determination that the appeal is frivolous or in which the appeal is dismissed prior to the filing of the attorney's proof brief, the attorney shall be paid at the rate of \$55 per hour, with a maximum fee of \$1,100 in each case.*

ITEM 4. Amend subrule 12.5(2) as follows:

12.5(2) Juvenile cases/joinder. In a juvenile appellate case *to which the attorney was appointed after June 30, 1999, and before July 1, 2006*, involving more than one appellant or appellee, where an attorney joins in all or part of the brief of another party, the attorney shall be paid at the rate of \$50 per hour, with a maximum fee of \$500 in the case. *In a juvenile appellate case to which the attorney was appointed after June 30, 2006, involving more than one appellant or appellee, where an attorney joins in all or part of the brief of another party, the attorney shall be paid at the rate of \$55 per hour, with a maximum fee of \$550 in the case.*

ITEM 5. Amend subrule 12.6(3), paragraph "a," as follows:

a. In an appeal *to which the attorney was appointed after June 30, 1999, and before July 1, 2006*, in which the attorney withdraws based on a determination that the appeal is frivolous or in which the appeal is dismissed prior to the filing of the attorney's proof brief, the attorney shall be paid at the rate of \$50 per hour, with a fee limitation of \$1,000. *In an appeal to which the attorney was appointed after June 30, 2006, in which the attorney withdraws based on a determination that the appeal is frivolous or in which the appeal is dismissed prior to the filing of the attorney's proof brief, the attorney shall be paid at the rate of \$55 per hour, with a fee limitation of \$1,100.*

ITEM 6. Amend subrule 12.6(3), paragraph "b," as follows:

b. In an appellate case *to which the attorney was appointed after June 30, 1999, and before July 1, 2006*, in which an appointed attorney joins in all or part of the brief of another party, the attorney shall be paid at the rate of \$50 per hour, with a fee limitation of \$500. *In an appellate case to which the attorney was appointed after June 30, 2006, in which an appointed attorney joins in all or part of the brief of another party, the attorney shall be paid at the rate of \$55 per hour, with a fee limitation of \$550.*

ITEM 7. Amend rule 493—14.3(13B,600A,815) as follows:

493—14.3(13B,600A,815) Hourly rate and fee limitations. Unless the attorney has a contract with the state public defender that provides for a different rate or manner of payment ~~specifically for cases under Iowa Code chapter 600A~~, claims for attorney fees in a termination of parental rights case under Iowa Code chapter 600A *to which the attorney was appointed after March 11, 2004, and before July 1, 2006*, shall be paid at the rate of \$50 per hour, with a fee limitation of \$500 for the trial court proceedings and \$500 for appellate proceedings. *Claims for attorney fees in a termination of parental rights case under Iowa Code chapter 600A to which the attorney was appointed after June 30, 2006, shall be paid at the rate of \$55 per hour, with a fee limitation of \$550 for the trial court proceedings and \$550 for appellate proceedings.* Claims shall not be approved for an amount in excess of this fee limitation.

ITEM 8. Amend subrule 14.5(1), paragraph "b," as follows:

b. Both the petitioner, or the person on whose behalf the petition is filed, and the respondent are indigent, *unless the petitioner is a private child-placing agency as defined in Iowa Code section 238.2, in which case the petitioner need not be indigent;*

[Filed Emergency 5/23/06, effective 7/1/06]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/21/06.